IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No. 264 of 2005
In
COMPANY PETITION No. 154 of 2000
With
COMPANY APPLICATION No. 333 of 2005
In COMPANY PETITION No. 154 of 2000
With
COMPANY APPLICATION No. 88 of 2006
In OFFICIAL LIQUDATOR REPORT No. 29 of 2005
With
OFFICIAL LIQUDATOR REPORT No. 29 of 2005
In COMPANY PETITION No. 154 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE BANK OF INDIA - Applicant(s)
Versus
O.L OF VARUN SEASON LIMITED & 3 - Respondent(s)

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Appearance :
DR SONIA HURRA for Applicant(s) : 1,
OFFICIAL LIQUIDATOR for Respondent(s) : 1,
MR BHARAT JANI for Respondent(s) : 2,
NOTICE SERVED for Respondent(s) : 3 - 4.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 10/03/2006

ORAL JUDGMENT

All the aforesaid three Company Applications are filed by the Secured Creditors of Respondent Company, in liquidation, i.e., Varun Seacon Ltd, i.e., State Bank of India, IDBI and Kotak Mahindra Bank Ltd (original Secured Creditor, ICICI) for appropriate orders directing the Official Liquidator of Varun Seacon Ltd (In Liqn.) to pay the amount due and payable to them from the amount realised by him on selling properties of the respondent No.1 Company, in liquidation, and/or at least to pay the amount in part from the realisation of the amount by selling the properties at least on ad-hoc basis. It is the contention on behalf of the respective applicants that the respondent No.1 Official Liquidator has in his credit a sum of Rs. 14,06,36,733.70 ps. on realisation of the properties sold by him pursuant to the order passed by this Court and they being Secured Creditors and having First Charge they may be paid at least Rs. 10 Crores from the aforesaid amount on ad-hoc basis till final ratio is decided and till other

properties are sold and O.L.R. No. 29 of 2005 is decided and disposed of.

2. It appears from the record that the learned Single Judge of this Court [Coram: Mr. M.S. Shah, J.] by order dated 7.3.2002 ordered for winding-up of M/s. Varun Seacon Ltd and appointed the Official Liquidator attached to this Court as Official Liquidator of the Company. The Official Liquidator was directed to take over possession of the assets and books of accounts of the said Company. The respondent No.1 Official Liquidator took possession of the assets and properties of the said Company situate at Block No. 111 and 112 of Village Bhumal, Taluka Nadiad, District-Kheda pursuant to the order passed by this Court. Pursuant to the order passed by this Court dated 29.4.2003 in O.L. Report No. 40/2003, this Court directed to constitute a Sale Committee comprising of Official Liquidator as Chairman and representatives of Secured Creditors as members for disposing of the assets of the said Company in liquidation.

2.1. The Official Liquidator issued advertisement in daily newspaper 'Gujarat Samachar' in Ahmedabad and Vadodara Editions and in 'Economic Times' in Ahmedabad and Mumbai Editions on 17.7.2004 to auction the assets in 3 lots as under:-

Lot No.	Particulars	Upset Price(in Rs.)	EMD Rs.
I.	Land except records	3.60 crores.	36 lacs
II.	Building Structures, & machinery and all other Assets of the company (Except land, compound wall, T.K. Office, A/c.Office, Tress and records).	15.40 crores.	154 lacs
III.	Composite offer for Lot No.1 and II (except records).	19.00 Crores.	190 lacs

2.2. That thereafter the Official Liquidator filed O.L. Report No. 29/2005 praying this Court to consider offer of the highest bidder, M/s. Roshanlal Gupta & Sons Pvt.Ltd., Mumbai, for purchasing the assets listed in Lot No.II for Rs. 11.61 Crores. However, thereafter, this Court by order dated 27.4.2005 in O.L.R. No. 29/2005 confirmed the sale of assets listed in Lot No.II for an amount of Rs. 14

Crores in favour of M/s. Roshanlal Gupta & Sons Pvt.Ltd, Mumbai who was the successful bidder directing to pay the entire sale consideration within a period of four months from the date of the order. It appears from the record that the said successful bidder, Roshanlal Gupta & Sons Pvt.Ltd., had deposited Rs. 14 Crores with the Official Liquidator. It also appears from the record and the Report submitted by the Official Liquidator dated 10th March 2006 that the Official Liquidator has already received an amount of Rs. 6,36,733.70 ps., towards interest on the said amount. Thus the Official Liquidator is having Rs. 14,06,36,733.70 ps., which can be distributed after deducting certain amounts which are required to be paid to the Central Government and the expenses incurred by the Official Liquidator and therefore all the 3 Secured Creditors have approached this Court by way of these Company Applications for disbursement of the amount amongst them as deemed fit by this Court. It was requested that the amounts be paid to the IDBI who is the Lead Institute for and on behalf of other secured creditors, i.e., SBI and Kotak Mahindra Bank Ltd

(ICICI) so that the same can be paid to the respective creditors by the IDBI as there is no dispute amongst them with regard to the disbursement.

3. Learned counsel appearing on behalf of SBI, while relying upon the documents at Page 25, 26 to 28, 29, 32, 35, 36 to 43 and 44 to 53, has submitted that the claim of the SBI is Rs. 18,35,39,494.16 ps., and they are having primary securities by way of hypothecation of stocks, receivables and bills, movables and the SBI has First Charge over the aforesaid things. It is further submitted that the SBI has First Charge to the extent of Rs. 7.42 Crores for which charge has been registered. The learned counsel has also relied upon the Valuation Report submitted by the GITCO to the Official Liquidator. The learned counsel for the SBI has further submitted that all the movables, plant and machineries, building structures other than land are sold and there are no workers' dues as on date, and after deducting the Central Commission Fees from the funds available with the Official Liquidator the balance

amount should be paid and/or disbursed amongst the Secured Creditors.

4. The learned advocate appearing on behalf of IDBI, who is the Lead Institute and one of the Secured Creditors, has submitted that the respondent Company in liquidation has executed a Deed of Hypothecation on 26.2.1993 and thereby created First Charge in favour of the applicant on all movable properties to secure Foreign Currency Loan of DM 2,435,660 equivalent to Rs. 500 lacs. It is also submitted by him that the said Company has also created a mortgage charge on immovable properties as on 9.8.1985 to secure the credit facilities. It is also further submitted that the said Company, in liquidation, executed a Deed of Hypothecation on 9.6.1994 and thereby created a First Charge in favour of the Bank on all its movable properties to secure Term Loan of Rs. 100 lakhs, and also created mortage on its immovable properties in favour of the applicant for securing the additional loan. It is also submitted that the charges created by the said Company, in liquidation, in favour of IDBI by way of

hypothecation and mortgage have been duly filed with the Registrar of Companies under the relevant provisions of the Companies Act.

5. Similarly, the learned counsel appearing on behalf of Kotak Mahindra Bank Ltd [original Secured Creditor, ICICI] has submitted that the debts due from the Company [In liqn.] have been assigned by ICICI Bank Ltd to Kotak Mahindra Bank Ltd.,on securities created by the company for loans granted by SCICI Ltd and ICICI Ltd. It is further submitted by him that the Kotak Mahindra Bank Ltd., has First Charge over the whole of the movable properties belonging to the borrower including the plant and machineries, machinery spares, tools and other movables. It is submitted by all the learned counsel that their charges are already registered with the Registrar of Companies in accordance with the provisions of the Companies Act. They have submitted that at present Lot No.II has been sold and the land except records is yet to be sold. It is further submitted that at present Plot No.II, with building structures, plant and machinery and all other assets

of the company have been sold and a sum of Rs. 14 Crores is realised and there being no workers' claims received by the Official Liquidator inspite of the advertisement in newspapers it will be just and proper to disburse the amount already realised by the Official Liquidator by selling the Lot No. II, i.e., building structures, plant and machinery and all other assets of the respondent Company [In Liqn.].

6. The Official Liquidator has submitted his Report dated 10th March 2006. It is submitted by him that pursuant to the order dated 27.4.2005 in O.L.R. No. 29/2005 the entire property of the Company (except the land) has been sold by him for full sale consideration of Rs. 14 Crores and the interest received on the said amount is of Rs. 6,36,733.70 ps. It is further submitted that the SBI, Anand, who is the applicant of Company Application No. 264 of 2005, has submitted an affidavit of proof of debt showing a sum of Rs. 37,29,68,080.84 ps., as outstanding dues as on 19.7.2005, and so far as IDBI is concerned, an amount of Rs. 16,99,99,395 is shown as due as on 7.3.2002. He has further submitted that the claim

filed by IDBI is not verified by the Chartered Accountant for calculating the ratio between all the secured creditors and he has requested that he may be permitted to verify the claims submitted by all the secured credtors along with the percentage ratio between the secured creditors. He has further submitted that pursuant to advertisements in 2 newspapers dated 27.10.2005 no claim of workers has been received by him. He has further submitted that the Central Commission fees comes to Rs. 10,55,626 and Rs. 21,10,441 respectively which are required to be deducted and deposited in terms of Rule 291(2) and 291(4) of the Company's Court Rules, 1959 in the Central Government account. He has further submitted that the Official Liquidator has incurred towards security and other expenses of Rs. 8,17,000 (approx.) till now. He has, therefore, submitted that after deducting the aforesaid amounts, the funds available with the Official Liquidator in his account would be Rs. 13,97,26,752. He has also submitted the particulars with regard to other bills of Approved Valuer etc.

7. After considering the submissions made on behalf of respective Secured Creditors as well as Official Liquidator and the Report submitted by the Official Liquidator, it appears that the Official Liquidator is having a balance amount of Rs. 13,97,26,752 in the account relating to the respondent company after deducting the Central Government Commission, fees, other expenses etc.,. The aforesaid amount is realised by selling Lot No. II, i.e., building structures, plant and machinery and all other assets of the respondent Company [In Liqn.], except the land which is yet to be sold. It also appears from the record and the Report that the Official Liquidator has not received any workers' claims till now inspite of the advertisement in two newspapers dated 27.10.2005. All the 3 applicants are the secured creditors and it appears that there is no other secured creditor except the present applicants. It appears from the Report submitted by the Official Liquidator that he and/or the Chartered Accountant is yet to verify the claim and decide the percentage ratio between the Secured Creditors. All the learned counsel appearing on behalf of the

Secured Creditors have submitted that till final percentage ratio is decided for payment to Secured Creditors, let a sum of Rs. 10 crores be disbursed in favour of the secured creditors on ad-hoc basis on filing an usual undertaking to that effect. The Official Liquidator has submitted that before effecting actual payment to the Secured Creditors they should submit the proof with regard to registration of their charge with the Office of Registrar of Companies as required under the provisions of the Companies Act, to which the learned counsel appearing on behalf of the secured creditors have expressed their no objection.

8. Under the circumstances, the following order is passed;

[1] On submitting necessary proof with regard to registration of their respective charge over the properties of the respondent Company [in liqn.] as required under the provisions of the Companies Act, the Official Liquidator is directed to pay an amount of Rs. 10 Crores to the IDBI towards the claim of

IDBI as well as SBI and Kotak Mahindra Bank Ltd (ICICI Ltd.) within the period of one week from today, and the IDBI in turn shall disburse the same amongst the secured creditors proportionately;

[2] The IDBI as well as other secured creditors, i.e., SBI and Kotak Mahindra Bank Ltd (original secured creditor being ICICI Ltd) shall file an usual undertaking before this Court with a copy thereof to the Official Liquidator to the effect that ultimately on working out of final percentage ratio in case if it is found that they are paid more amount than what was required to be paid, then they will return and/or repay the same immediately;

[3] That the aforesaid payment of Rs. 10 Crores would be on ad-hoc basis and shall be subject to the final order that may be passed deciding and fixing the final percentage ratio;

[4] It will be open for the Official Liquidator to prematurely withdraw the Fixed Deposit Receipts for making the aforesaid payment of Rs. 10 Crores.

After making the payment of Rs. 10 Crores, the balance of the total amount shall be kept by the Official Liquidator in Fixed Deposit Receipts and orders to that effect will be passed after final percentage ratio is fixed.

[5] The Official Liquidator shall submit the Report with regard to final percentage ratio after getting the accounts/claims verified by the Chartered Accountant within the period of one month from the date of payment of Rs. 10 Crores.

9. All these applications are accordingly disposed of with the above directions. It will be open for the respective applicants to move other applications for further amounts towards their claims on determination of final percentage ratio.

[M.R. Shah, J.]

RMR.